

TDH EXECUTIVE ORDER

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Order Number: XO-0110

Subject: PROTEST OF APPLICATION OR BID DENIAL FOR CLIENT SERVICES CONTRACT

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- (a) Purpose. The purpose of this policy is to establish the procedure for dispute resolution for any applicant that has responded to a Texas Department of Health (department) solicitation such as a request for proposal [RFP] or a request for application [RFA] for client services.
- (b) Exceptions. A state statute or rule or a federal statute, regulation or guideline will prevail over the provisions of this policy unless the statute, rule, regulation, or guideline can be read together with the provision or provisions of this policy to give effect to both.
- (c) Definitions.
 - (1) Client services contracts - Contracts with a subrecipient to carry out a department program to benefit eligible clients. A listing of TDH programs that have client services contracts is maintained in the Grants Management Division.
 - (2) Contract - A legally enforceable agreement by which goods, services, property, or property rights are to be provided in return for consideration.
 - (3) Financial services - The department office responsible for the function of assessing provider compliance with the financial requirements under a contract.
 - (4) Representative - Person designated by a program or by the appropriate financial services office to negotiate with an applicant to resolve a dispute.
 - (5) Reviewer(s) - A person designated by the Associate Commissioner of the Associateship that issued the solicitation, the Associate Commissioner for Human Resources and Support, and the Associate Commissioner for Information Resources and Business Management, or three persons, one appointed by each Associate Commissioner, who review information and reach a decision concerning intended action. Any questions during this process may be directed to the Office of General Counsel.
 - (6) Subrecipient - Any person, agency or establishment, government department, or nonprofit organization that receives federal or state assistance to carry out a program through a primary recipient such as a state or local government, or other subrecipient, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of federal assistance under other agreements or programs. Distinguishing characteristics of a subrecipient include determining eligibility for assistance, measuring performance against meeting the objectives of the program, programmatic decision-making, and conforming with applicable program compliance requirements. Subrecipient is synonymous with subcontractor.
- (d) Request for Review. An applicant may request review of a department action that denies the award of a contract for client services to the applicant.
 - (1) Notice of Dispute.
 - (A) An applicant may dispute the denial by giving notice of the dispute in writing to the addressee to whom the original application was made. This notice may be faxed.
 - (B) The department must receive the notice of dispute no later than the close of business three (3) working days after the date the applicant knows or should have known of the action the applicant is disputing.
 - (C) The notice is the basis for all further action and should contain the following information:
 - (i) a copy of the letter from the department notifying the applicant of the action;
 - (ii) an identification of the issue or issues to be resolved.
 - (iii) a precise statement of the relevant facts;
 - (iv) a statement or argument in support of the action or actions requested; and

(v) any documentation of the applicant's position.

(2) Dispute Resolution Procedures.

- (A) The representative will schedule a meeting or conference call to attempt to resolve the issues in dispute.
- (B) The representative will give written notice of resolution of the dispute to the bureau chief or division director, as appropriate, of the department office that issued the solicitation.
- (C) Any resolution will be reduced to writing and will be acknowledged by both applicant and representative.
- (D) If the dispute was not resolved, the program representative will notify in writing the other party and the bureau chief or the division director, as appropriate, of the department office that issued the solicitation that the dispute has not been resolved or that the resolution cannot be satisfactorily reduced to writing.
 - (i) The bureau chief or division director, as appropriate, of the department office will contact the three associate commissioners, who will appoint a reviewer(s).
 - (ii) The bureau chief or division director, as appropriate, will forward the applicant's notice and the response of the representative to the reviewer(s).
 - (iii) If the reviewer(s) determine that additional information is necessary or desirable, the reviewer(s) may permit or require additional information.
 - (iv) The reviewer(s) may grant, deny, or modify all relief requested in the request for dispute resolution.
 - (v) The reviewer(s)'s decision will be in writing and will contain a discussion of the reason for the decision and the remedial action, if any.
 - (vi) The reviewer(s) will send copies of the decision to the applicant, the representative, and any other interested parties when the decision has been reduced to writing. The decision may be faxed.
 - (vii) The decision of the reviewer(s) is final.

ISSUED BY: Patti J. Patterson, M.D.
Commissioner of Health

DATE: June 18, 1997

REVIEW/REVISION DATES:

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